sion on broader ground: "They became stockholders by paying the amount fixed by law or agreed upon with the corporation, and taking certificates of stock with a clause in them stating the further payments to which the stock might be subjected by order of the directors, thus making the title of the purchaser or stockholder a conditional title under the by-laws depending on the payment of the future calls, but leaving such payment optional with them." The opinion then goes on to compare the liability to pay to a lien on the stock.

It will be seen that the court lost sight of what seems to be the key of the subject, viz.: That subscribed capital is a trust fund for the protection of the creditors of the corporation, in which view, while the fact that no call had been made by the five directors might be a valid defence in an action by the company, yet a creditor would stand on a different footing, and in regard to this case, which seems in conflict with the authority of cases in its own state, most lawyers would agree with Judge STRONG that it does not "assert the doctrine which is generally accepted," and at any rate there would seem to be no doubt that an assignee in bankruptcy, who not only represents the creditors, but possesses the powers of the corporation, so far as necessary to render available its assets, could collect the amount of an unpaid sum due upon the company's stock.

H. BUDD, JR.

Supreme Court Commission of Ohio.

WILLIAM H. GROGAN *v.* EMMA G. GARRISON.

Under section two of the Dower Act (1 S. & C. 516), an estate conveyed as jointure, to be a good legal or statutory bar to dower, must be such an estate, as to certainty and kind, that the wife, on the death of her husband, may take possession of, and hold in severalty, and not in common with others.

If the estate so conveyed be such as that at common law dower could be assigned by metes and bounds, then in such case the jointure, to be a legal bar to dower, should be an estate in severalty, so that the widow may enter and hold in severalty, without being compelled to resort to an action to have her jointure assigned to her by metes and bounds.

An antenuptial contract which conveys an undivided one-third part, or any other interest in common with others, in lieu of dower, is not a good statutory bar.

Whether such an estate will constitute a good equitable jointure depends on the facts and circumstances of the case, and when such contract is pleaded by way of equitable defence to an action for dower, the facts upon which it depends, and not the pleader's conclusions from the facts, must be stated.

The conveyance of an estate as jointure, of an undivided one-third of a lot of land for the life of the wife, when such lot is less than one-third of the husband's lands, is *primâ facie* not a good equitable jointure, in the absence of facts showing that the same is fair and reasonable, or of such acts of the widow as amount to an estoppel.

The antenuptial covenant of a woman, that in case she survive her husband she will not claim dower in his estate, cannot, in an action by her for dower, operate to bar such action, either by way of release or estoppel, where such antenuptial contract does not constitute either a legal or equitable bar.

Error to the Superior Court of Cincinnati.

The defendant in error, Emma G. Garrison, formerly Emma Grogan, filed her petition for dower, stating therein that she was the widow of one William Grogan, who, during coverture, was seised of certain lands, out of which she asked an assignment of her dower as provided by law.

William H. Grogan, a minor, and the only son of the deceased, by a former marriage, and John Parker, administrator of William Grogan, were made defendants.

William H. Grogan, by his guardian, filed an amended answer, setting up as a bar to this action, an antenuptial contract, a copy of which, by order of the court, was made part of the answer. It conveyed to Mrs. Grogan a lot "for her jointure, and in full satisfaction of her whole dower."

To this the petitioner demurred, on the ground that said amended answer did not state facts sufficient to constitute a defence.

Upon the issue thus made, the case was reserved for hearing to the general term, where it was held that the matters set up as a bar were insufficient, and decreed that the petitioner was entitled to dower.

This writ was brought to reverse that judgment.

Goodman & Storer, for plaintiffs in error:—

I. The antenuptial contract is a good bar under the Dower Act, section 2; 1 S. & C. 518, 519.

II. The contract under consideration is a good bar at common law. For the definition and requisites for a good jointure, see Coke's Littleton, ch. 19, 36 a. And as to what Lord COKE meant by "competent," see Washburn on Real Property 299; 1 Atkinson on Conveyancing 266; 1 Bright on Husband & Wife 434; 1 Roper on Husband & Wife 462; Scribner on Dower 381; *Drury* v. *Drury*, 2 Eden 39; Id. 75; *Walker* v. *Walker*, 1 Ves. Sr. 54; *Tinney* v. *Tinney*, 3 Atkyn 8; *Caruthers* v. *Caruthers*, 4 Bro. Ch. 500; *Smith* v. *Smith*, 5 Ves. Jr. 189; *Dyke* v. *Randall*, 2 De Gex, McN. & G. 209.

III. The contract is a bar at equity: *Garthshore* v. *Chalie*, 10 Ves. Jr. 1; *Walker* v. *Walker*, 1 Ves. Sr. 54; *Harvey* v. *Ashley*, 3 Atkyn 3; *Eastcourt* v. *Eastcourt*, 1 Cox 20; *Tew* v. *Lord Winterton*, 3 Bro. Ch. 493; *Simpson* v. *Gutteredge*, 1 Mad. 609;

Andrews v. *Andrews*, 8 Conn. 79; *McArtee* v. *Teller*, 2 Paige 511; *Kennedy* v. *Mills*, 13 Wend. 553; *Gould Ex'rs* v. *Womack*, 2 Ala. 82; *Stilley* v. *Folger*, 14 Ohio 610; *Murphy* v. *Murphy*, 12 Ohio St. 407; *Phillips* v. *Phillips*, 14 Id. 308.

In conclusion, we claim then:—

1. That the judgment of the Superior Court, as shown in their reported opinion, was based upon mistakes of fact apparent on the record.

2. That in every particular the antenuptial contract was in strict conformity to the Act of 1824.

3. That not in England, any other of the United States, or in Ohio, has hitherto any attempt been made to set aside such an agreement made strictly in conformity to the statute of 27 Henry VIII., and the similar acts of the various states.

4. That for the meaning of the word "jointure," as used in the Act of 1824, we are remitted to the common law, and that there, adequacy or amount is never to be considered in construing the validity of a jointure.

5. That at equity an unbroken chain of decisions go to settle the law to be, that antenuptial settlements are contracts, and that a woman under no disability at the time is as much bound by her contract, and estopped to deny its force, as a man could be.

L. H. Swormstedt, for defendant in error:—

I. The antenuptial agreement and facts set up in the amended answer are not sufficient to bar the defendant in error of her dower in the estate of William Grogan, deceased, because it is not a legal jointure within the letter and meaning of the statute: 1 S. & C. 518. As this statute is similar to the provisions of 27 Henry VIII., chap. 10, relating to jointures, it is subject to the constructions given that statute and similar statutes in other states, and being in derogation of a common-law right, should be construed strictly. The statute itself contemplates that a case may exist in which a conveyance can be made, and intended to be in lieu of dower, and yet fail to operate as a legal bar: Sect. 4 of the Dower Act. For a definition of "jointure," see Coke on Lit., sect. 41, note 8; 4 Kent, m. p. 56; Scribner on Dower 371, sect. 6; 1 Bright on Husband & Wife 435; 2 Scribner on Dower 384, sect. 32. The antenuptial agreement set up in bar of this action, does not, as to its time of commencement, quantity or cer-

tainty of the lands which the widow is to have, meet the requirements of the law or statute: Thomas's Coke 597. In reference to the matter of dowerment, *ad ostium ecclesiæ*, see Thomas's Coke 464; 1 Scribner on Dower 73; 1 Washburn on Real Property 223, sects 4, 5, 7; 1 Bright on Husband & Wife 367, sect. 23; 1 S. & C. 516.

II. The antenuptial agreement is no equitable bar: *Stilley* v. *Folger*, 14 Ohio 647; *Murphy* v. *Murphy*, 12 Ohio St. 417; *Womack* v. *Womack*, 2 Ala. 83; *Tarbell* v. *Tarbell*, 10 Allen 278.

III. The widow is not barred of her dower by the antenuptial agreement, because the contract on its face is unfair and unreasonable, and there are no allegations in the amended answer to show the contrary, the burden of proof being on the defendant below: *Miller* v. *Miller*, 16 Ohio St. 532; *Phillips* v. *Phillips*, 14 Id. 315; 14 Ohio 647; *Kline* v. *Kline*, 57 Penna. St. 122; 64 Id. 122.

IV. This brings us to consider, whether or not the fact of the defendant in error having been of age and having signed this antenuptial agreement, estops her from setting up a claim to dower. To arrive at anything like a satisfactory conclusion on this point, we must inquire what the widow's right of dower was when this antenuptial agreement was entered into—what the widow's power over it then was? Among the essential elements of every contract, there must not only be parties competent to contract, but subject-matter that has actual or potential existence for the contract to operate upon, and there must be mutuality. Viewed thus, how does this antenuptial agreement stand? What was the right or subject-matter that the defendant in error released when she signed the instrument set up in bar to her present action? Judge SUTLIFF well expressed it in the case of *Murphy* v. *Murphy*, 12 Ohio St. 416; *Needles* v. *Needles*, 7 Id. 432; 7 Mass. 155; 8 Shepley 364; *Gibson* v. *Gibson*, 15 Mass. 105; *Shaw & Wife* v. *Boyd*, 5 S. & R. 309; *Sheldon* v. *Bliss*, 8 New York 31; *Blackmon* v. *Blackmon*, 16 Ala. 633; 2 Scribner on Dower 384, sect. 32, cited above. Nor can the instrument operate as an *estoppel in pais*, for, as a general principle of law, it is universally held that an *estoppel in pais* will not operate unless the act done or thing said was made in fraud or bad faith, and to the prejudice of the party setting it up. Both of these elements must exist together: Bigelow on Estoppel 473; 2 Scribner on Dower 384; *McKenzie*

v. *Steele et al.*, 18 Ohio St. 38; *Morgan et al.* v. *Spangler*, 14 Id. 102; *Beardsley* v. *Fort*, 14 Id. 416; *McAfferty et al.* v. *Conover s Lessee*, 7 Id. 105; *Lessee of Buckingham* v. *Hanna*, 2 Id. 551; *Vance* v. *Vance*, 8 Shepley (Maine) 364. Applying these principles of law to the present case, there is no foundation upon which an *estoppel in pais* can rest, for the very elements necessary are wanting in this case. Can fraud or bad faith be imputed to the defendant in error, because she permitted herself to be a party to the antenuptial agreement and signed the same? What legal right or interest of William H. Grogan, who sets up this defence, in his father's estate, has been interfered with or prejudiced, which existed at the period when this antenuptial agreement was made? The making of this antenuptial agreement was, and the attempt to enforce it is, an endeavor to take from the widow a right given to her by law, and which, from time immemorial, has been jealously guarded and protected by the courts, for the purpose only of enlarging the interest of the heir. Is this what the law means by the rights of others being prejudiced? Certainly not; especially when, as in 4 Ohio 495, the court say: "Estoppels are not favored by courts of law, and less by courts of chancery."

The opinion of the court was delivered by

JOHNSON, J.—By the record, it appears that the case came on for hearing at the general term, on the petition, amended answer, and demurrer thereto, upon the questions presented by the pleadings.

The court, without directly passing on the demurrer, virtually does so by special findings of the truth of the facts stated in the petition; also that the defendant is in possession of the premises described in the petition, claiming the estate of the plaintiff therein, and that the plaintiff had notified him of her claim, and requested that her dower be assigned, which he refused to do. It is then adjudged that she be endowed of one equal third part of the lands in the petition described. The court then proceeds to find that as, by certain proceedings in the Probate Court of said county, the plaintiff's dower interest in said premises "has been set off in dollars and cents, all proceedings therefore to set off the same by metes and bounds, by virtue of any order of this court, is waived by the parties thereto." Upon this finding, it is ordered "that the plaintiff receive her dower in money, as set off to her in said

Probate Court, and that defendant pay the costs," &c. No mention is made of the demurrer; but the findings and judgment that she was entitled to dower was, in effect, sustaining it. It is a little difficult to understand these two orders—the one that she is entitled to dower in one equal third part of the premises, and the other that the land had been sold in another court, and dower in money already assigned; in which last proceeding she had waived her right to the relief sought in this action. Assuming, however, that the record is defective upon this point, we proceed to an examination of the errors complained of.

The errors assigned are:—

1. The court erred in holding that the amended answer did not constitute a *statutory jointure* in bar.

2. In holding said answer did not amount to an equitable bar.

3. In holding that the petitioner was not estopped by reason of the facts stated in said answer.

4. In holding that the burden of proof was on the defendant to show that said antenuptial contract was reasonable.

As to this last assignment, it is sufficient to say that there is nothing of record to show that the court did so hold. The demurrer having been virtually sustained, though not formally, there remained no defence to the action. The defendant being a minor, it became the duty of the court to be satisfied of the truth of the petition, before rendering a judgment. The record shows the facts specially found, but no such holding as is complained of appears.

The remaining errors assigned make it necessary to give a full synopsis of the defence. The amended answer, with the antenuptial contract which it sets up, states that previous to February 23d 1867, there was a treaty between the plaintiff and said William Grogan, concerning marriage between them; that she was of full age, and under no restraint; that he was many years her senior, and of feeble health, and was the owner of the premises described in the petition, and a small amount of personalty; that he had one child, the defendant, by a former wife; and that the terms of an adjustment of the rights of the plaintiff, in the event of their marriage and her survivorship, were freely discussed and agreed on.

He agreed to enter into said marriage only on the condition that she would bind herself to accept, in the event of his death—an event then anticipated as not, likely, very remote—a certain

interest in his estate, in full satisfaction of her claims as his widow; and on the 23d of February 1867, she freely and voluntarily entered into a written agreement to that effect, which was duly executed and acknowledged by both parties, whereby it was stipulated that said Grogan, in consideration of said marriage about to take place with plaintiff, whose name was then Emma Mitchell, did thereby grant, bargain, sell and convey to her, during her natural life, real estate in Cincinnati, described as follows:—

"All that lot of land, situate in said city, and being the one undivided one-third part of the southwest part of lot No. ten [10], in Ewing's subdivision, fronting ten [10] feet on Fifth street, and running ack on Kilgour street, on lines parallel with said street last named, one hundred and sixteen feet, nine inches [116¾ feet], said lot hereby conveyed being part of ground purchased by said city for the purpose of extending Kilgour street." It is averred that this land so conveyed was in full satisfaction of her dower. The parties were married February 24th 1867, and he died in August thereafter.

The answer concludes: "Wherefore, he denies that said petitioner is entitled to dower, as claimed in the petition, and asserts that adequate provision was made for her by the aforesaid jointure, and prays that her claim may be restricted to the premises set forth in the contract."

The prayer that her claim, which was to have dower in this ten feet as well as in the twenty-five feet in lot No. 9 adjoining, be restricted to the premises just described—that is, to the ten feet—would seem to imply that the pleader understood this contract as embracing a life-estate in the undivided one-third of ten feet front by one hundred and sixteen feet deep, though, in argument, it is insisted that this description embraced all of the ten feet front, and not an undivided one-third. We do not so understand it. The will of deceased is printed as part of the record. There is no statement of facts showing the extent and value of William Grogan's property at the date of the marriage, nor the value of the part conveyed, nor of that remaining, to enable the court to say whether it was adequate or not. There is no averment that the deed was ever delivered to her, or that she, either during or after coverture, ever had possession; on the contrary, the court finds, as one of the reasons doubtless for sustaining the demurrer, that the premises

are in the possession of the defendant; and still more, that, by proceedings in the Probate Court, instituted, as they must have been, by the defendants, or one of them, the property had been sold and converted into money. We mention this as accounting for the absence of such important averments in this defence. Grogan died in August 1867, and this petition was filed in 1870, and the presumption is that, during the interval, this real estate, now set up as a jointure, was held and controlled by the heir, and, for aught that appears, she declined to accept the provision thus made. Was she bound to accept it? The petitioner declined to take under the will. The will refers to this antenuptial contract, and declares that "she shall not have any dower in my real estate described in the contract; * * * that is to say, that said Emma Grogan shall have no dower in the real estate mentioned and described in said contract."

Let us inquire:

1. Was this antenuptial contract a legal bar to an action for dower? If it was, then this action was improperly brought. The Statute of Ohio, on this subject, reads:

"Sect. 2. If any estate shall be conveyed to a woman as jointure, in lieu of her dower, to take effect immediately after the death of her husband, and to continue during her life, such conveyance shall bar her right of dower.

"Sect. 4. That when any conveyance, intended to be in lieu of dower, shall, through any defect, fail to be a legal bar thereto, and the widow, availing herself of such defects, shall demand her dower, the estate and interest conveyed to such widow with intention to bar her dower, shall thereupon cease and determine."

What, then, is a jointure, under this statute? It is a word having a fixed legal signification, long prior to the enactment of our dower act. The section quoted is, in fact, but the adoption of a similar provision, found in stat. 27 Henry VIII, c. 1056, which enacted that where lands are settled to the use of the wife, "that then, in every such case, every woman having such jointure * * * shall not have title to any dower in the residue." This Act of Parliament was enacted to prevent a woman from having both dower and jointure. Before its passage, accepting a jointure was not a bar to her action for dower.

Under this statute, the word jointure had as definite and well-defined legal meaning as any other legal term. It was an estate

made to the wife in satisfaction of dower. Sir EDWARD COKE says, "that to the making of a perfect jointure, within that statute, six things are to be observed:

"1. It is to take effect for her life, in possession or profit, presently after the death of her husband.

"2. It must be for her own life, or for a greater estate.

"3. It must be made to herself, and to no other for her.

"4. It must be made in satisfaction of her whole dower, and not of part of her dower.

"5. It must be expressed or averred to be in satisfaction of her dower.

"6. It may be made either before or after marriage."

He adds: "So as to comprehend all in a few words: a jointure * * * is a competent livelihood of freehold for the wife, of lands or tenements, to take effect presently in possession or profit after decease of the husband; now, as dower *ad ostium ecclesiæ*, or *ex assensu patris*, is better for the wife, because, in respect to certainty, she may enter, than dower at common law where she is driven to her action, and therefore Britton calleth dower *ad ostium ecclesiæ* and *ex assensu patris*, establishment of dower by the husband, and assignment of dower after his decease (for nothing that is uncertain is established); so jointure (that hath the force of a bar or dower by said Act of 27 Henry VIII.), is, as hath been said, more secure and safe for the wife than dower *ad ostium ecclesiæ* or *ex assensu patris*, for besides it is as certain as these others she may enter into it, after the death of her husband, and not be driven to her action:" Coke on Lit., sect. 41, note 8.

A jointure with all these qualities is binding on the widow, and a complete bar to her claim: 1 Cruise Digest, title 9, chap. 1, sect. 19. But it had to be as certain as dower *ad ostium ecclesiæ* or *ex assensu patris*, and to be better than these; and, as Coke says, more secure and safe for the wife than either of these, or than dower at common law. It had to be established, so the wife could enter, after the death of her husband, and not be driven to her action. It is said jointure is to be as certain as dower *ad ostium ecclesiæ* or *ex assensu patris*. How certain were they? Coke says: "Dowment *ad ostium ecclesiæ* is where a man of full age, seised in fee-simple, who shall be married to a woman, and when he cometh to the church-door to be married, then after affiance and troth plighted between them, he endoweth the woman of his whole

land or the half or other lesser part thereof, and then openly doth declare the quantity and the certainty of the land which she shall have for her dower. Here be two things that the law doth delight in, viz.: To have this and the like openly done; second, to have certainty, which is the mother of quiet and repose, and this word (moiety), above said to be intended of the half in certainty, and not of the moiety in common, which clearly appeareth in that here Littleton saith the quantity and certainty of the land:" Coke on Lit., title Dower, sect. 39.

So dower *ex assensu patris* must have the same quality of certainty. It must be "of parcels of his father's lands or tenements with the assent of his father, who after assigns the quantity and parcels. In this case, after death of the son, the wife shall enter into the same parcel, without the assignment of any: Coke Lit., title Dower, sect 40. Jointure was as certain as dower *ad ostium ecclesiæ* or *ex assensu patris*. It was more secure and safe than either of these. It was, like them, an establishment of dower by the husband, and better than either of these, she might enter into it, after the death of her husband, and not be driven to her action. This was doubtless for the reason that it was evidenced by a conveyance in writing. In *Vernon's Case*, 4 Coke 1, the leading one on the subject, it is said, "that dower *ad ostium ecclesiæ* and *ex assensu patris* concluded the wife of her dower, if she entered into the land so assigned to her, after the death of her husband, for these being in such form as the law requires to be dowers in law, an assignment of dower, when the husband was sole seised, cannot be made of the third or fourth part in common, but ought to be in severalty." 1 Thomas's Coke 597.

At common law it was imperative as a requisite of dower that the husband should be sole seised. Upon estates held in joint tenancy no dower would attach: Lit., sect. 45; 1 Scribner on Dower 257. So stringent was this rule, that where one joint tenant aliened his share, destroying the possibility of survivorship and severing the tenancy, the widow of the alienor could not claim dower: 4 Kent 37; Coke Lit., sect 31 *b*. The reason for this rule is obvious, and applies with equal force to a jointure. The sole seisin of the husband was indispensable, because only in such case could dower be assigned by metes and bounds, and as jointure was in lieu of dower, the same qualities as to the estate granted necessarily existed. It must be so assigned as to be held in severalty

without an action at law. By the terms of our statute jointure must be an estate, conveyed as jointure. If from any defect it fail to be a legal bar to dower, and the widow elects to take advantage of this defect, and demands her dower, the estate conveyed as jointure shall cease and determine. In what sense, then, is this word jointure used? It was a term which, for more than two hundred years, had had a fixed legal signification. Long prior to the adoption of the Act of 27 Henry VIII. jointures were in common use, and their meaning well understood. That statute, from which ours is almost literally borrowed, has been carefully considered in many reported cases by the most profound jurists of England. The repeated discussions, and the long line of decisions, growing out of this act, and similar ones in most of the states of the union, were doubtless familiar to our ancestors, who incorporated a like provision in the statutes of Ohio. They were men well versed in the common law, and especially that part relating to real estate. It is well established as a rule of interpretation, that where particular words or phrases have in law an acquired, fixed legal signification, and are thus incorporated into a statute, the legal presumption is that the legislature meant to use them in this legal sense: *Turney* v. *Yeoman*, 14 Ohio 207. Where a statute speaks of a deed, it must be taken in its technical sense, as understood at common law—that is, a writing sealed and delivered by the parties: *Moore's Lessee* v. *Vance*, 1 Ohio 10. So, also, where the word mortgage is used, it will be assumed that it is used in its ordinary legal signification, as well understood at common law, and that the legal liabilities incident to it were understood to follow. Per SCOTT, J., *Medical College* v. *Zeigler*, 17 Ohio St. 52.

Guided by this rule of interpretation, and by the light of the authorities and decisions referred to, we are led to conclude that the estate to be conveyed as jointure must possess those prime requisites enumerated by LITTLETON and COKE, which we have quoted—that there must be such an estate as the widow can enjoy in severalty. It must declare the "quantity and certainty" of the lands she shall have—the "two things that the law doth delight in"—first, to have it done under our statute, by a solemn deed of conveyance; and, second, to have "in certainty, which is the mother of quiet and repose." And Lord COKE adds, speaking of certainty in dower at the church-door, and commenting on LITTLE-

TON'S text: "This word moiety means a half in certainty, not of moiety in common."

In *Winch's Cases*, p. 33 (London, 1657), it is said, to be a good jointure, a wife must have a sole estate, after the death of her husband. In the case at bar, the conveyance is fatally defective in this prime quality of certainty. It conveys an undivided one-third for life. The widow can not enter and enjoy in severalty; she would be driven to her action at law to have it assigned and set apart to her. One of the prime reasons for making a jointure was to give the wife the right, without her action, to enter and be sole possessor. Again, to constitute a good conveyance of an estate, the deed must not only be duly executed, but it must be delivered. We therefore hold that this antenuptial contract, for the reasons stated, is not a good statutory bar.

II. The next inquiry is, was it good as an equitable jointure? What constitutes an equitable bar is a question fruitful in decisions. Much learning and many conflicting decisions can be found in the books. The substance of all the decided cases is that any provision made before marriage, whether of lands and tenements, goods and chattels, or whatever description of property, that constitutes a valuable consideration, if fair, reasonable, and just, as between the parties, in view of all the circumstances of the case, at the time the contract was made, will, in equity, be supported as a good equitable jointure: *Miller's Ex'r* v. *Miller*, 16 Ohio St. 532; 2 Scrib. on Dower 385–401. Each case must be determined on its own particular facts and equities. Looking at all the facts disclosed by this answer, and the absence of averments, we have arrived at the conclusion that this contract is not, in equity, a bar. It conveys less than one-tenth of the real estate; no value is stated; it was only for life, in less than one-third of the whole; nothing was ever done to put her in possession; no acceptance by her, or part performance; and no facts stated to show that it was fair, reasonable, or just to her. It has been an axiom, accepted for ages, that dower was to be favored; that no widow should be barred of that ancient and cherished right, unless—

1. There was settled upon her, in strict conformity to law, an estate, as jointure, possessing all those requisites already pointed out; or,

2. There were such adequate provisions made, in lieu of dower, as, under all circumstances, was fair, reasonable, and just.

III. As to estoppel. Neither do we think the petitioner estopped. She has done no act during or since coverture, that amounts to an estoppel. Her antenuptial covenant to accept this conveyance in lieu of dower cannot have the effect to release her dower. In the case of *Hastings* v. *Dickinson*, 7 Mass. 155, the court says: "This leads us to the second ground, viz., that the defendant's covenant ought to have the effect of a release of dower. But this effect cannot be admitted on any correct legal principle. It is true that a covenant never to prosecute an existing demand shall operate as a release to avoid circuity of action. But a release of a future demand not then in existence is void. Now in this case, the settlement being executed before marriage, the demand of dower had no existence, the same being inchoate." In the case of *Vance* v. *Vance*, 8 Shepley (Maine) 364, the court say: "There can be no estoppel by executory covenants not to claim a *right* which is first to accrue afterward. The covenants of the wife with the husband before marriage, that she will not claim dower in his estate can not operate by way of release, estoppel, or rebutter to bar her of her dower."

The judgment of the Superior Court is therefore affirmed.

SCOTT, Chief Judge, DAY, WHITMAN and WRIGHT, JJ., concurred.

Supreme Court of Missouri.

MICHAEL HANNON ET AL. *v.* THE COUNTY OF ST. LOUIS ET AL.

The rule that counties, being political sub-divisions of the state, are not liable for the laches or misconduct of their servants, has no application to a neglect of those obligations incurred by counties when special duties are assumed or imposed on them.

Thus, where the county of St. Louis made a contract for laying water-pipe to the county insane asylum, the work being done under the supervision of the county engineer, and while a trench was being dug in the grounds of the asylum, it caved in and killed one of the workmen, it was held that the duty in which the county was engaged, was not one imposed by general law upon all counties, but a self-imposed one; that *quoad hoc* the county was a private corporation, engaged in a private enterprise (more especially as the work was being done on its own property), and governed by the same rules as to its liability. In such case it is immaterial, whether the performance of the work is voluntarily assumed in the first instance, or is a special duty imposed by the legislature, and assented to by the county.

And municipal and *quasi* corporations are, under the above circumstances, subject to the same doctrine of liability.